



# THE INTERIM

May 2012

A monthly newsletter of the Montana Legislative Branch

## In This Issue

Children & Families Committee .....	1
Districting & Apportionment Commission.....	2
Education & Local Government Committee...	2
Energy & Telecommunications Committee .....	4
Law & Justice Committee .....	5
Legislative Finance Committee .....	5
Select Committee on Efficiency in Government .....	6
State Administration Committee .....	7
State-Tribal Relations Committee .....	7
Water Policy Committee .....	8
Back Page: Taking Aim at Unfunded Liabilities in Public Pensions .....	9
Calendar of Legislative Events .....	11

The Interim is published by:

Legislative Services Division  
Room 110, State Capitol  
PO Box 201706  
Helena, MT 59620-1706  
(406) 444-3064

The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch website at [leg.mt.gov](http://leg.mt.gov).

## Children & Families Committee to Work on Studies, Review Advisory Panels

The Children, Families, Health, and Human Services Interim Committee will continue its study of childhood trauma in May, with a focus on learning more about how child abuse and neglect cases are handled in Montana.

Also at its May 14 meeting, the committee will review:

- preliminary bill drafts related to its study of childhood hunger; and
- the activities of more than a dozen advisory councils to the Department of Public Health and Human Services.

For the Senate Joint Resolution 30 study of childhood trauma, the committee will hear more about the duties of caseworkers who handle abuse and neglect cases and about early intervention efforts for children from birth through 3 years of age. The committee wants more information about the barriers to providing a greater array of early intervention services.

Committee members will take a first look at two bill drafts they requested as part of the House Joint Resolution 8 study of childhood hunger. After studying the topic last summer and fall, the committee asked for bills to appropriate money for:

- making grants to programs that provide food support to children; and
- paying start-up costs for new school breakfast programs and reimbursing schools for the reduced-price breakfasts that they serve to children whose family income ranges from 131 percent to 185 percent of the federal poverty level.

The committee will review the drafts and take public comment on them before deciding whether to revise the proposed legislation.

The committee also will spend time reviewing the various groups that have been created in state law to advise DPHHS on a variety of topics. The groups range from the Advisory Council on Aging to the mental health Service Area Authorities and the Traumatic Brain Injury Advisory Council.

Legislators in 2011 approved House Bill 142, which requires interim committees to review both advisory councils and agency reports that are established by law. The committees are to decide whether any of the councils or reports should be eliminated or revised.

The meeting will begin at 8 a.m. on May 14 in Room 137 of the Capitol. The agenda and meeting materials will be posted on the committee's website, <http://leg.mt.gov/cfhhs>, as they become available.

## Redistricting Panel Holds Hearing Through May

The Districting and Apportionment Commission continues to travel the state to take public comment about the five proposed redistricting plans. In late March and early April, the commissioners heard from people in Butte, Helena, Lewistown, and Bozeman. Attendance at each hearing was exceptional, with most meetings being standing room only.

Audio files of the hearings are available at <http://leg.mt.gov/districting> on the "Meetings" page.

In addition to providing comments at the hearings, members of the public are also sending in their ideas by email, mail, and fax. Copies of every comment received by the commission are available at <http://leg.mt.gov/css/Committees/Interim/2011-2012/Districting/public-comment.asp>

The Commission will hold several more hearings this spring before taking the summer to consider input. The hearings will be held at the following locations:

- May 8 in Havre, 7 p.m., Havre City Council Chamber, 520 4th Street
- May 9 in Wolf Point, 1 p.m., Roosevelt County Senior Center, 124 Custer Street
- May 15 in Crow Agency, 1 p.m., Cultural Center, Little Big Horn College, 8645 South Weaver Drive
- May 15 in Billings, 7 p.m., Lincoln Education Center Board Room, 415 North 30th Street
- May 16 in Miles City, 1 p.m., Miles Community College, Room 106, 2715 Dickinson Street

Draft redistricting plans, including regional maps for each hearing, are available at <http://leg.mt.gov/districting>. Because there will be a limited supply of printed copies of the draft plans available at the hearings, people who wish to comment on the plans are encouraged to review the maps online before the hearings.

## County Reports Available

A series of short reports is available on the commission's website. Called "By the Numbers", the reports combine information from maps and detailed district reports to provide easy-to-understand information about small to mid-sized counties. Each report includes the county's 2010 census population, maps of the county for each redistricting proposal, and various statistics about the makeup and population of each district in the county.

Reports have been prepared for Broadwater, Chouteau, Fergus, Jefferson, Lake, Pondera, Richland and Valley counties and are available at the commission's website, <http://leg.mt.gov/districting>, under the publications section or at <http://leg.mt.gov/css/Committees/Interim/2011-2012/Districting/Maps/btnreports.asp>. Other reports will be added as time allows.

## Commission Asks for Comments

The commission encourages the public to review the draft redistricting plans and send in their comments about those plans. The commission will meet in August to begin to amend and adopt a final redistricting plan for the 100 state House districts; public comments are an important part of the commission's information-gathering process. All comments become part of the commission's permanent public record and are sent to each commissioner.

Send written comments to Districting and Apportionment Commission, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706; by email to [districting@mt.gov](mailto:districting@mt.gov); or by fax to 406-444-3036.

## Education & Local Government Committee

The Education and Local Government Interim Committee met on March 22 and 23, handling a wide variety of K-12 and postsecondary education matters, as well as continuing to monitor developing options for amending the subdivision for lease or rent exemption statutes.

### Committee Reviews Advisory Councils

Like all interim committees, ELG has been reviewing statutorily-created advisory councils, as required in 5-5-215, MCA, to make recommendations to the 2013 Legislature on their retention or elimination. The committee has reviewed the structure and purpose of four advisory councils and has requested a bill draft to eliminate the Student Loan Advisory Council. ELG will determine whether to recommend retention or elimination of the others at its next meeting. The advisory councils ELG has reviewed are:

- the Certification Standards and Practices Advisory Council, attached to the Board of Public Education. CSPAC

makes recommendations to the BPE on teacher certification standards and how they are administered; specialist certification standards; the feasibility of establishing standards of professional practices and ethical conduct; the status and efficacy of teacher education programs; and on policies related to denial, suspension, and revocation of teacher, administrator, and specialist certification and the appeals process.

- the Governor's Postsecondary Scholarship Advisory Council, attached to the Commissioner of Higher Education. The Board of Regents administers the scholarship program with assistance from the council. The council is to gather information and make recommendations on policies and procedures to govern the program, the purpose of which is to provide need-based and merit-based scholarships to Montana residents toward cost of attendance at 2-year and 4-year postsecondary institutions. Some of the scholarships are to be allocated to areas of study that promote economic development or address critical workforce shortage areas.
- the Fire Services Training School Advisory Council, appointed by the Board of Regents. The council is required to advise the board and director of the Fire Services Training School on planning, coordination, governance, management, and control of the school to promote the purposes of the school. The school's purpose is to provide fire service personnel with professional training; identify new methods of fire prevention and suppression and disseminate information about them; provide a resource center for use by local fire services; provide testing and certification for personnel and apparatus; and coordinate fire services training in the state.
- the Student Loan Advisory Council, appointed by the Board of Regents. The council is required to advise the board on policies, rules, and procedures necessary for administering the Guaranteed Student Loan Program.

Representatives of the Student Loan Advisory Council and the GSLP told the committee that the GSLP is federally regulated. The council does not provide services to lenders and there are not many lenders left in the program. The council has met twice a year to discuss processing of loans, but it does not discuss or advise on policy.

The representatives said that affordability of postsecondary education is the significant policy matter in this arena and the Board of Regents Affordability Task Force is taking the lead on affordability policies and strategies. The representatives suggested that the committee request a bill to eliminate the Council. ELG agreed, and the committee will review the bill draft at its next meeting.

## Subdivision Rent or Lease Exemption Study

ELG's primary local government-related issue this interim is the statutory exemption from local review under the Subdivision and Platting Act of subdivisions for lease or rent. Staff of the Department of Commerce's Community Technical Assistance Program have been facilitating meetings of a working group of interested individuals and organizations to develop options for amending subdivision for lease or rent exemption statutes (SLRs). Participation in the working group was solicited from every individual and organization who testified during the 2011 session on House Bill 494 and HB 629--both attempts to fix problems that many believe are inherent in the SLRs.

The exemption has been a source of confusion for property owners in some counties and has been interpreted differently by different jurisdictions, prompting a request by the Missoula county attorney for a state attorney general opinion. In January, the attorney general issued an opinion providing, in part, that:

The provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" does not apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record.

On March 23, Department of Commerce staff reported that the working group had discussed five options for potential bill drafts, with many of the details yet to be worked out. The options are:

- Revise the Subdivision and Platting Act to allow for expedited review of SLRs with review criteria set forth in the statute. This option would also involve creating a definition of SLR, revising the current definition of "subdivision" to remove SLR, including the new definitions in the Sanitation in Subdivisions Act, and establishing minimum and maximum criteria in state law to guide local discretion.
- Remove reference to SLR in the Subdivision and Platting Act, and allow local governments to adopt site plan review of lease or rental uses under the existing Property Development Review statutes (sections 7-21-1001 through 7-21-1003, MCA).
- Remove reference to SLR in the Subdivision and Platting Act, and modify sections 7-21-1001 through 7-21-1003, MCA, with stricter/more detailed review criteria, then allow local governments to adopt site plan review of lease or rental uses under that statute.

- Remove reference to SLR in the Subdivision and Platting Act, and create new statutes (to be codified in either Title 7 or Title 76, MCA) with SLR review criteria. Allow local governments to adopt site plan review of lease or rental uses under that statute.
- Revise the Subdivision and Platting Act with an exemption for compliance with zoning, and revise Part 2 zoning (Title 76) with reasonable protest provision to make zoning more attainable for counties.

The working group continues to meet to refine these ideas and will discuss them further with ELG at a future meeting.

### June Meeting Scheduled

ELG meets June 18. The agenda will include continuing discussion of the estimated costs to school districts of implementing Common Core curriculum standards, review of the information that has been presented on advisory councils and recommendations on retention or elimination, review of the K-12 Shared Policy Goals and Accountability Measures document, reports on the SLR working group progress, and review of potential agency legislative initiatives.

For more information about ELG, visit the committee's website at <http://leg.mt.gov/elgic> or contact Leanne Kurtz, ELG staff, at 406-444-3064 or by email at [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

## Energy & Telecom Committee Heads to Butte for May Meeting

The Energy and Telecommunications Interim Committee meets May 17-18 in Butte and will tour a geothermal site, an electrical systems operating center, and a natural gas plant.

The two-day meeting on the Montana Tech campus also includes a discussion of several bill drafts that the committee may request for introduction as committee bills. The committee will meet in Room 302 of the Natural Resources Building.

### ETIC to Review Bill Drafts, Tour Facilities

The committee is expected to review six bill drafts and decide how best to proceed. If the committee moves forward on the draft legislation, it will be posted for public comment in advance of the ETIC's July meeting. The draft legislation that will be reviewed in May includes:

- LCet01: Requiring a vote of individual rural electric cooperative boards of trustees when entering into agreements for construction of electric generating facilities or entering into contracts to purchase more electricity than required based on actual load and requires disclosure of load forecasts.

- LCet02: Revising the graduated renewable energy standard and related reporting requirements; clarifying the definition of "renewable energy credit"; extending the time for filing compliance reports; and requiring all electricity suppliers to file reports with the Public Service Commission to show necessary compliance or exemption from the standard.
- LCet03: Exempting public utilities and competitive electricity suppliers from the graduated renewable energy standard, if the cost of the renewable energy credits is less than or equal to the applicable administrative penalty.
- LCet04: Defining "eligible renewable resource" to include the renewable fraction of output from hydroelectric pumped storage and other energy storage facilities.
- LCet05: Requiring utilities, competitive electricity suppliers, or owners of electrical generation to file renewable energy credit reports with the Department of Revenue; and eliminating existing exemptions from the reporting requirement.

Last January, committee members asked staff to gather background information and to work with the Public Service Commission on potential draft legislation related to clean-up and updating of Montana's renewable portfolio standard and to revisions to the RPS related to competitive suppliers and utilities.

In March, the PSC agreed to work on draft legislation to revise the renewable portfolio standard. The draft proposals are contained in LCet02 through LCet05. The ETIC will decide whether to request the legislation as potential committee bills. If so, the drafts with committee changes, if any, will be posted for a 30-day public comment period. If the ETIC does not pursue the draft legislation, the PSC may bring back some or all of the concepts in July, when the commission presents its agency legislation for committee review.

In addition, stakeholders have been working on draft legislation to revise Montana's one-call, or "call before you dig" law. The stakeholders are scheduled to present their proposal at the meeting.

The morning of May 17, committee members will tour the PPL EnergyPlus Trading Floor and the NorthWestern Energy System Operations Control Center. In the afternoon, the committee will discuss statutory duties, review draft one-call legislation (LCet01), and hear a presentation on NorthWestern Energy's Smart Grid Demonstration Project.

On May 18, the ETIC will discuss rural electric cooperatives. Last January, the committee requested draft legislation and related background information for review. In addition, the ETIC will tour the Orphan Girl Mine Geothermal Project

Site, learn about research on the Montana Tech campus, and travel to Anaconda to see the Dave Gates Generating Station.

An agenda and related materials for the May meeting are at <http://leg.mt.gov/etc>. The tours are open to the public, but limited seating is available. For more information contact Sonja Nowakowski at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or at 406 444-3078.

## Law & Justice Committee Works on Legislative Proposals

The Law and Justice Interim Committee is developing preliminary recommendations for the legislative session.

So far, the committee's preliminary bill draft requests cover the following:

- jail suicide prevention;
- mental health emergency detention standards;
- restorative justice;
- concealed weapon permits;
- revising Department of Justice advisory councils and reports;
- updating statutes governing the criminal intelligence information section;
- eliminating the requirement for a racial profiling report to be provided to the legislature;
- requiring the Department of Public Health and Human Services to provide records and report to law enforcement about suspected child abuse and neglect; and
- requiring that a condemnee in an eminent domain action receive a statement of rights.

Most of the preliminary bill drafts were reviewed by the committee at the April 19-20 meeting in Helena.

The committee's primary study this interim is the SJR 29 study of restorative justice. The committee has heard from many experts in the field, including program coordinators in Gallatin County, Missoula County, and Flathead County and Dr. Mark Umbreit, Ph.D., founding director of the Center for Restorative Justice and Peacemaking at the University of Minnesota. During the April meeting, the committee discussed four bill proposals from Rep. Margie MacDonald concerning restorative justice:

- authorizing judges to require restorative justice program participation as a condition of deferred or suspended sentence;

- establishing a restorative justice grant program under the Montana Board of Crime Control;
- requiring the Montana Department of Corrections to establish victim impact panels as part of the cognitive-behavioral treatment programming for prison inmates; and
- providing for a reentry task force and reentry court as pilot project for offenders being released from prison and reentering Montana communities.

Information and possible committee action concerning the Sexual or Violent Offender Registry, the Supreme Court's new rules of civil, appellate, and district court procedure, and Lake County law enforcement and investigation issues were also on the agenda for the April meeting.

Coverage of the April meeting will be in the June issue of the newsletter.

The committee will meet two more times this interim. Agenda items for the meetings will include the continued House Bill 142 review of advisory councils and agency reports that are established by law; the completion of committee recommendations and bill drafts; and the review and request for bill drafting purposes of agency legislative proposals. The committee may also follow-up on allegations raised during public comment on how the Department of Corrections manages prison inmates and treats families and friends.

For more information, visit the committee's website at <http://leg.mt.gov/ljic> or contact Dave Bohyer at 406-444-3592 or [dbohyer@mt.gov](mailto:dbohyer@mt.gov).

## Finance Committee Members & Staff Assess Natural Resource Development

During the week of April 9, five staff members of the Legislative Fiscal Division and six legislators, including members of the Legislative Finance Committee, toured Roosevelt, Richland, Dawson, Fallon, Custer, and Big Horn counties and a bit of North Dakota. Several local legislators joined the group throughout the tour. The small groups of staff and legislators visited with representatives of school districts, county governments, city governments, community colleges and with industry experts and others in the area to better understand the impacts of natural resource development.

The impacts of development were reported by all areas of government. The primary impacts for schools were children that move in and out of school districts as a result of new families, special needs children, and growing enrollments. County impacts affect roads, sanitation, environmental, law enforcement, volunteer emergency services, and local plan-

ning. City impacts affect sewer systems, law enforcement, funding, and planning. In addition, North Dakota officials who have already been dealing with more significant oil development gave suggestions for Montana as development moves west.

While most of the drilling in the past 5 years has occurred in North Dakota, Montana has two areas of development interest. First, drilling and fracking activity in North Dakota has added to Montana's population and has put stress on the state's infrastructure. Second, drilling and fracking activity has recently been moving more into Montana. This drilling and fracking activity increases the demands on Montana's infrastructure. Legislators and staff saw drill rigs, fracking operations, "man camps", road construction, and many other impacts from oil development.

Staff also visited with coal producers and toured a major mining site. This provided a firsthand opportunity to learn more about coal mining, reclamation activities, transportation issues, and the economic impacts of coal development.

## Efficiency Committee Hears Perspectives, Tours Facilities in Butte

The Select Committee on Efficiency in Government met April 9-10 on the Montana Tech campus in Butte. The committee focused on ways to implement or enhance government efficiency and effectiveness in health care, including Medicaid; technology; and natural resources.

During the April 9 Natural Resources Subcommittee meeting, Jason Mohr, legislative research analyst, reported on posting septic system and well permitting records online; ground Water Information Center data; increased use of electronic forms; standardizing state-federal agreements; pre-payment of Department of Natural Resources and Conservation road

use permits; mandatory issuance of permit to private party; and annual DNRC and timberland stakeholder meetings.

Representatives of the Bureau of Mines and the Department of Environmental Quality discussed data bases and the possibility of coordinating the compilation and use of data. The subcommittee did not make additional recommendations to the full committee for the natural resources portion of the larger study.

Dr. Donald Blacketter, chancellor of Montana Tech, welcomed the full committee. Led by Dr. Leo Heath, Petroleum Division, the committee toured the Fracture Stimulation Lab. Next, a panel discussed the intersection of natural resources and state government efficiency. The panel, moderated by



SCEG members and staff visiting Montana Resources property

Sen. Jim Keane, included Tad Dale, Montana Resources; Mike Robins, SeaCast; and Dave Galt, Montana Petroleum Association. The committee toured the Anselmo Mine and Montana Resources' properties for the remainder of the day.

On April 10, the committee toured the REC and SeaCast facilities. During the tours, committee members learned about the public-private relationships of MRI, REC, and SeaCast with Montana Tech, Montana State University's College of Engineering, and vocational education and training programs.

Back on campus, a second panel, moderated by Rep. Pat Noonan, examined the business perspectives of state government efficiency and what's working and what needs improvement. The panel included Jeff Folsom, Anaconda Work and Residential Enterprises; Mike Thatcher, Community, Counseling and Correctional Services Inc.; and Jim Smitham, Butte Local Development Corporation and the Montana Economic Developers Association.

Chuck Wright, CEO, St. James Healthcare, Butte, described the interactions of St. James Healthcare with various state programs, particularly Medicaid.



SCEG members touring Montana Resources property in Butte

The Subcommittee on Information Technology is scheduled to meet Monday afternoon, May 14, in Room 102 of the Capitol in Helena. The full committee will meet on Tuesday, May 15, in the same room. More information about the subcommittee meeting and full committee meeting, including starting times, will be posted on the committee's website as soon as details are confirmed.

For more information about the select committee visit <http://leg.mt.gov/sceg>, or contact Dave Bohyer, lead staff, at [dbohyer@mt.gov](mailto:dbohyer@mt.gov) or 406-444-3592.

## State Admin Committee Hears Governor's Pension Proposal

The State Administration and Veterans' Affairs Interim Committee met April 19 in Helena. Budget Director Dan Villa presented Gov. Brian Schweitzer's pension proposals for the Teachers' Retirement System and the Public Employees' Retirement System.

The TRS proposal would increase the employee contribution by 1 percent, use \$25 million of state land revenue, and provide a one-time-only contribution of \$14.7 million by reducing the amount school districts can keep in their retirement account reserves from 35 percent to 20 percent.

The PERS proposal would include a 1 percent contribution increase for employees and for employers, a state contribution of \$18.1 million from coal severance tax collections, and an unspecified additional local government contribution.

The committee also heard about proposed Government Accounting Standards Board rules that would change the way the state reports pension liabilities. David Niss, staff attorney, updated the committee on recent court decisions related to state employee retirement systems and will provide a memorandum that summarizes the cases.

The committee will continue the study of options for dealing with the unfunded liabilities of the retirement systems on June 12. The committee will meet jointly with the Legislative Finance Committee. At this meeting, staff will present policy, legal, funding policy, and financial information about various scenarios for addressing the unfunded liabilities.

Much of the rest of the meeting focused on items related to the Office of the Commissioner of Political Practices. Staff of the commissioner's office told the committee about the progress with ongoing investigations and presented concepts for legislation. The committee will decide at the June meeting whether to request committee bills to incorporate the legislative concepts.

The committee staff presented a briefing on the duties and responsibilities of the Office of Commissioner of Political Practices and provided information about ethics offices in other states as requested at the January meeting. The committee directed staff to draft a resolution to study the operations of the office and options for appointing the commissioner. Following a briefing on political advertising disclaimer requirements in other states, the committee also discussed including study of the commissioner's authority and penalty provisions in the resolution.

The committee also decided to discontinue the study of combining school board, primary, and city elections.

The next committee meeting will be June 12-13 in Helena. For more information, contact Sheri Scurr, committee staff, at 406-444-3596 or [sscurr@mt.gov](mailto:sscurr@mt.gov) or visit the committee's website at <http://leg.mt.gov/sava>.

## State-Tribal Committee Meets at Fort Peck

The State-Tribal Relations Committee of the Montana Legislature met with the Executive Board of the Fort Peck Sioux and Assiniboiné tribes April 4 and 5 in the Greet the Dawn Building on the Fort Peck Community College campus in Poplar.

The first day's agenda included topics suggested by the committee. The acting director of the Governors' Office of Indian Affairs described its activities in Indian country.

The tribes and the committee discussed state-tribal economic development topics, including the Montana Department of Commerce's Indian Country Economic Development grant and lending programs, the impacts of increased oil development in the area, cultural and historical preservation (including consideration of potential committee action on the matter), and full faith and credit for tribal court orders. They also discussed bullying in schools and suicide prevention. Last year, several suicides led to multiple efforts to deal with the tragedy of suicide, and those efforts appear to have had a positive effect.

The second day's agenda covered topics put forward by the tribal executive board of the Fort Peck tribes. Education topics included updates on scholarships, vocational opportunities, athletics, and incentives to reduce truancy and non-attendance. Health topics included praise for new wraparound programs and concern about health disparities and underfunding of the Indian Health Service. Other topics included workforce development, veterans' issues, including the lack of transportation for veterans' services, ground source heat pump successes, and the economic and social impacts of the oil boom.

The State-Tribal Relations Committee is scheduled to meet July 20 in Helena. For more information about the committee visit <http://leg.mt.gov/tribal> or contact Casey Barrs, committee staff, at [cbarrs@mt.gov](mailto:cbarrs@mt.gov) or 406-444-3957.

## Exempt Well Study Takes Water Panel on the Road

The Water Policy Interim Committee takes to the road in June to gather public comment on proposals dealing with water wells exempt from permitting.

The committee cancelled its May meeting in Helena in favor of June meetings in Bozeman, Kalispell, and Hamilton. Those areas experienced an influx of exempt wells in recent years. That activity, along with proposals to revise the law and administrative rules, prompted the 2011 Legislature to require the WPIC to study exempt wells (House Bill 602). The committee shall provide a report to the 2013 Legislature “that provides clear policy direction and necessary legislation to guide Montana’s policy” on exempt wells.

An exempt well is a water well that pumps at a rate of less than 35 gallons per minute and produces less than 10 acre feet of water a year. An exempt well does not require a permit prior to drilling. It is estimated that a home with an acre of lawn uses less than 2.5 acre-feet a year. (An acre foot is equivalent to a foot of water covering a football field).

Water use permitting is dictated by law and administered by the Department of Natural Resources and Conservation. The agency determines if water is physically available and if existing water users would be harmed by the proposed diversion. This includes an analysis of the effect a ground water well may have on a river or stream.

Current water users may object to the permit application and the applicant may have to change the proposal or perform mitigation in order to obtain a permit. That analysis does not apply to exempt wells.

There are more than 113,000 exempt wells statewide. About 56,000 exempt wells have been drilled since the current law took effect in 1991. Of those, about 26,000 were drilled for domestic purposes in areas of the state that are closed to most types of surface water appropriations.

The WPIC study must:

- determine the number of existing exempt wells and estimate how many wells may be drilled over the next decade;
- summarize the beneficial uses of water from exempt wells;

- analyze the amount of water necessary for various uses compared to the amount allowed by law;
- explore options to provide accurate measurement of exempt well water use;
- examine options to ensure exempt wells don’t exceed allowed limits or affect other users;
- examine applicable research and analysis conducted by the ground water investigation program at the Montana Bureau of Mines and Geology;
- analyze how the water appropriated by exempt wells may affect surface water appropriations; and
- examine the legal options for integrating exempt wells into the principle that first in time is first in right when senior water rights are not fulfilled.

The WPIC also shall study:

- the statutes, rules, programs, and policies of other states for exempt wells, including legal challenges;
- the adequacy of existing programs and tools including controlled ground water areas, mitigation banks, community water system incentives, and in-lieu-of-fee programs;
- the relationship between exempt wells and land use decisions, including the relationship between exempt wells and individual septic systems, the cost comparison of installing public water systems or extending existing water infrastructure, and the role of local governments in requiring alternatives to exempt wells; and
- the rulemaking authority of the DNRC in relation to the statutory policy and purpose provided for in law.

The committee wants public comment on five proposed bills related to exempt wells as well as other ideas. The proposed bill drafts are:

- Establishing by law that the water used by exempt wells in the counties of certain size must be offset with mitigation water. (LC8000)
- Requiring that larger, denser subdivisions install public water systems, which would most likely also require a water use permit. (LC8001)
- Reducing the volume allowed under the exemption. (LC8002)
- Lowering the exemption limit on volume for wells drilled in unconfined aquifers, which are more likely to be connected to surface water used by senior water right holders. (LC8003)



- Limiting new subdivisions to an exemption of 35 gallons a minute and 10 acre-feet a year using one or more wells. Appropriations of more water would be subject to permitting. (LC8004)

The scheduled meetings to provide comment are:

- June 19, Bozeman, Gallatin County Courthouse, 311 W. Main St., Rm. 306, 7:00 p.m.
- June 20 - Kalispell, Red Lion Inn, 20 N. Main St., 7:00 p.m.
- June 21, Hamilton, Bitterroot River Inn, 139 Bitterroot Plaza Dr., 7:00 p.m.

- July 12-13, Rm. 172, State Capitol
- Sept. 10-11 Rm. 172, State Capitol

Comments also may be made in writing to the Water Policy Interim Committee, Rm. 171B, State Capitol Building, P.O. Box 201704, Helena, MT 59620-1704 or by email to [jkolman@mt.gov](mailto:jkolman@mt.gov).

For more information visit <http://leg.mt.gov/water> or contact Joe Kolman, committee staff, at 406-444-3747 or [jkolman@mt.gov](mailto:jkolman@mt.gov).

## Back Page

### Taking Aim at Unfunded Liabilities in Public Pensions

**By Sheri Scurr**  
**Legislative Research Analyst**  
**Legislative Services Division**

It's the \$3.9 billion question. What will Montana's lawmakers do during the next legislative session about the growing unfunded liabilities of the teachers', public employees', sheriffs', and game wardens' retirement plans? No one has a crystal ball, but a couple of committees, the State Administration and Veteran's Affairs Interim Committee and the Legislative Finance Committee, are working on some things. And the governor has recently unveiled his proposed fix. This article is about how to take aim at these unfunded liabilities so we can hit the right target.

Having watched 10 different Legislatures grapple with retirement systems over the past 20 years and having staffed at least 10 different committees trying to fix the problem in the state's pension plans, I think it is safe to say that the most difficult part of a research analyst's job is helping legislators define the problem they want to solve. It is hard enough with one legislator, let alone a legislative committee. What is the "problem" with the state's public pension plans? It depends on which legislator you talk to. For some, the problem is promising to public employees benefits that are too expensive. For others, the problem is public employers who are not willing to pay for the benefits that their employees have earned. Some want to limit employer risk; others want to limit employee risk. Some want to ensure no one will pay higher taxes. Others want to ensure that the taxpayers get the government services they need.

Legislative staff often have been in the middle of the cross-fire. But, if we holster our guns, the smoke would clear and we could assess if we've even hit the target. When the smoke

clears, the target that we will see right in front of us will be the benefit obligations that public employers have already incurred but that cannot be paid off within 30 years given current contributions and anticipated investment returns.

There are, of course, secondary targets, such as cash flow, plan design options, new actuarial methods, and new accounting standards. We need to and can talk about these secondary targets for a full committee meeting or even an entire legislative session. We can also talk about what got us into our present predicament in the first place -- historical market losses or benefit enhancements, or both. But the problem still staring us in the face is how to pay for the benefit obligations we already have. So, as Steven Covey says, let's put first things first.

How much do we owe? Adding up all the unfunded actuarial liabilities of all the public employee retirement systems, the unfunded actuarial liability is \$3.9 billion: \$1.8 billion in the Teachers' Retirement System (TRS), \$1.3 billion in the Public Employees' Retirement System-Defined Benefit Plan (PERS-DB), and the rest in the smaller retirement systems. These numbers represent the benefit obligations that cannot be financed over a 30-year period by current employee and employer contributions, plus expected investment returns.

How much is this as a percentage of salary, which is how employer and employee contributions are calculated, made to the retirement systems? According to the most recent actuarial valuations, TRS would need 3.63% of covered payroll more than what is currently being paid, and PERS-DB would need 6.36% of covered payroll more than what is currently being paid. What do these percentages amount to in dollars? If we wanted to pay a lump-sum amount rather than a per-

centage of payroll, TRS would need about \$30 million a year and PERS-DB would need about \$70 million a year.

Who's going to pay for this and how are the key questions for the 2013 Legislature. Most of the employers in TRS are school districts, and about 60 percent of the employers in PERS are local governments.

Lots of ideas are being fired down range to try to reduce future liabilities, such as raising the retirement eligibility in TRS from 25 years to 30 years, cash infusions from special funding sources, eliminating or reducing the guaranteed annual benefit adjustments, increasing employer contributions, increasing employee contributions, reducing the multipliers in the benefit formulas, increasing vesting requirements, increasing retirement age and eligibility for early retirement, etc.

These options reduce the cost of future benefits to allow more of the money currently being contributed to be used to pay down unfunded liabilities. But no option by itself will be able to knock down the target of already accrued unfunded liabilities. It will take a combination of all these options and

perhaps additional ones. Also, each of these options will have long-term policy, legal, and fiscal implications. The implications include reducing equity among pension plan members, eroding the retirement security of thousands of public employees, exposing public employers to lawsuits for breach of contract, diverting tax revenue from the general fund, and many others.

Shots are also being fired about converting the retirement systems from defined benefit plans to defined contribution plans, which are similar to private-sector 401(k) plans, or developing cash balance and other hybrid plans for future employees. These options are aimed at limiting future liabilities, but do not squarely hit the target of accrued liabilities. In many cases, these options may make matters worse. The target to zero in on first is who should pay for the benefits that have already accrued and how should they be paid for. It will take team work and team leadership to stay focused on first things first, but with a steady hand, clear sight, and a fixed target, the 2013 Legislature can hit the mark and start getting our pension plans back on track.

## Calendar of Legislative Events

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

May						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 Environmental Quality Council, Rm 172, 1 p.m.	2 Environmental Quality Council, Virginia & Nevada Cities tour Legislative Council, Security Subcommittee, Rm 102, 8:00 a.m. Legislative Council, Rules Subcommittee, Rm 102, 9:00 a.m. Legislative Council, Rm 102, 1:30 p.m.	3 Environmental Quality Council, Rm 172, 8 a.m. Legislative Council, Rm 102, 9:00 a.m.	4	5
6	7	8 Districting & Apportionment Commission, Havre, City Council Chamber, 7 p.m.	9 Districting & Apportionment Commission, Wolf Point, Roosevelt County Senior Center, 1 p.m.	10	11	12
13	14 Children & Families Committee, Rm 137, 8 a.m. Select Committee on Efficiency in Government, Helena, room & time TBA	15 Districting & Apportionment Commission, Crow Agency, Little Big Horn College, Cultural Center, 1 p.m. Districting & Apportionment Commission, Billings, Lincoln Education Center Board Room, 7 p.m. Select Committee on Efficiency in Government, Helena, room & time TBA	16 Districting & Apportionment Commission, Miles City, Miles Community College, Cultural Center Rm 106, 1 p.m.	17 Energy & Telecommunications Committee, Butte, Montana Tech campus, Natural Resources Bldg Rm 302, 8:30 a.m.	18 Energy & Telecommunications Committee, Butte, Montana Tech campus, Natural Resources Bldg Rm 302, 8:00 a.m.	19
20	21	22	23	24	25	26
27	28	29	30	31 Legislative Computer System Planning Council, Rm 102, 9 a.m.		

June						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11 Legislative Finance Committee , room & time TBA	12 Economic Affairs Committee, room & time TBA  Legislative Finance Committee , room & time TBA  State Administration & Veterans Affairs Committee, room & time TBA	13 Economic Affairs Committee, room & time TBA  Economic Affairs Committee - Sub- committee on Rural Volunteer Firefighter Work Comp, room & time TBA  State Administration & Veterans Affairs Committee, room & time TBA	14	15	16
17	18 Education & Local Government Com- mittee, room & time TBA	19 Legislative Audit Committee, Rm 172, time TBA  Water Policy Com- mittee, Bozeman, Gallatin County Courthouse, Rm 306, 7 p.m.	20 Water Policy Com- mittee, Kalispell, Red Lion Inn, 7 p.m.	21 Law & Justice Com- mittee, room & time TBA  Water Policy Com- mittee, Hamilton, Bitterroot River Inn, 7 p.m.	22 Law & Justice Com- mittee, room & time TBA	23
24	25	26	27	28	29	30







Legislative Services Division  
PO Box 201706  
Helena MT 59620-1706